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FEB 12 2004

FILE: SRC 02 056 51059 **Office:** TEXAS SERVICE CENTER **Date:**


IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The petitioner submitted a motion to reopen and reconsider. The director affirmed her prior decision in the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an investment and real estate development company that seeks to employ the beneficiary as a financial specialist. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation based on insufficient documentation of the beneficiary's work experiences. On motion, counsel submitted further documentation on the beneficiary's previous employment in India and her employment status. The director determined that the record was still insufficient to establish that the beneficiary was qualified to perform the duties of the position. On appeal, counsel asserts that the director's analysis of the work employment documentation was arbitrary. Counsel further asserts that the petitioner submitted sufficient documentation to establish the progressively responsible nature of the beneficiary's work experience in India.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's two requests for additional evidence; (3) the petitioner's responses to both of the director's requests; (4) the director's denial letter; (5) the motion to reopen and reconsider; (6) the director's decision on

the motion to reopen and reconsider; and (7) Form I-290B and supporting documentation. The documentation submitted includes three letters from the beneficiary's former employers in India, and an educational equivalency report written by Diane C. Hurley, an evaluator with Foundation for International Services, Inc., Bothell, Washington. The AAO reviewed the record in its entirety before issuing its decision.

The original I-129 petition sought the beneficiary's services as a financial specialist. The petitioner indicated in a cover letter dated December 7, 2001, that it wished to hire the beneficiary because it needed a financial specialist to successfully continue its business in the field of real estate investment and development. The petitioner also listed the following job duties in its cover letter: establish investment objectives and find ways to maximize profitability; conduct comprehensive quantitative analyses of financial information, covering assets, liabilities, cash flow, insurance coverage, taxation, and other financial aspects; monitor compliance with financial and securities regulations; and verify the correctness of records. The petitioner stated that it required a minimum of a bachelor's degree in business administration or a related field.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. In particular the director determined that the petitioner's two letters of work experience did not state the exact dates of employment, and were not dated within the past 60 days as requested by the director. On motion, counsel submitted further documentation of the beneficiary's work experience in India that included letters with more exact dates of employment from the two previous employers and a third document identified as a certificate of Income Tax (Form-16). This document established that the beneficiary received a salary from the Development Credit Bank in Mumbai, India from April 1, 1993 to March 31, 1994. Counsel also submitted a document from the Bharat General Store in Nizamabad, India, that documented the beneficiary's salary for the 1998-1999 years. The director stated in her decision on the motion to reopen or reconsider that the letter from the Development Credit Bank, which stated the beneficiary worked as an assistant accountant, did not meet the definition of progressively responsible experience equivalent to completion of a United States baccalaureate degree. The director also questioned whether the letter of experience from Bharat General Store actually accounted for two years of progressively responsible work experience.

On appeal, counsel asserts that the director's failure to categorize the beneficiary's period of employment with Development Credit Bank as progressively responsible work experience was based on the beneficiary's job title of assistant accountant. Counsel states that there is no valid basis upon which to base the conclusion that the job title of assistant accountant does not amount to progressively responsible experience. Such a determination should not be based on the job title, but rather the job duties. Counsel asserts that an evaluator had already determined that the experience was progressively responsible. Counsel also questions the director's use of the salary document to dismiss additional time that the beneficiary was working at the Bharat General Store. Counsel also views as arbitrary the use of only years of experience for which a salary could be verified when calculating progressively responsible work experience.

Upon review of the record, the director's request for tax documents to verify the beneficiary's previous work experiences appears irrelevant to this proceeding. The letters from her previous employers appear sufficient to establish these work experiences. The record is also not clear as to why the petitioner was required to submit letters from former employers attesting to the work experiences of the beneficiary written within a specific amount of time.

The petitioner stated that the beneficiary is qualified for the position because she completed a 3-year baccalaureate degree program in commerce from an Indian institution, and had work experience that was equivalent to a fourth year of university studies. Counsel also submitted a copy of an evaluation from the Foundation for International Services, Inc.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a financial services field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner submitted an evaluation from the Foundation for International Services, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor of science degree in commerce from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains two sets of letters from the beneficiary's former employers in India, the Development Credit Bank, and the Bharat General Store. The record also contains a certificate for computer training from January 1996 to March 1997, and the beneficiary's resume. The documentation does not establish equivalence to a baccalaureate degree in accounting. Although the computer training certificate establishes that the course work for this program was computer fundamentals, MS DOS, MS Windows FoxPro, and MSOffice, the petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of a baccalaureate degree in a finances specialist-related field. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the proffered position. As described by the beneficiary's first employer, the Development Credit Bank, the beneficiary's employment involved duties such as customer service, computer data entry, and staff management for day-to-day work. This position appears to be an entry-level one in the banking industry. The employer did not indicate any additional responsibilities given to the beneficiary during her five years with the bank. The beneficiary's position with the Bharat General Store contains such phrases as "do the taxes such as sales tax, income tax, franchise tax and property tax;" report cash flow projection, compile the company budget report summaries on a quarterly

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

basis.” These duties appear more at a higher level of responsibility than the beneficiary’s previous job; however, they also include duties such as “check daily accounts and maintain the cashbook, and make paychecks for all the employees.” While the difference in duties between the two jobs could be said to indicate more progressively responsible work experience, a bookkeeper, or individuals not possessing a baccalaureate degree in commerce could perform some of the duties in either job. Thus, they do not necessarily denote the application of specialized knowledge in a field such as business administration or commerce. Thus, the AAO cannot conclude that the beneficiary’s past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is financial analysis. Furthermore, neither employer indicates that the beneficiary’s work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the Foundation for International Services, Inc., cannot be considered a “recognized authority” because the evaluator did not provide her qualifications as an expert; no resume or other evidence was attached to the evaluation.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director’s denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary’s proposed duties. However, as the AAO is dismissing the appeal on another ground, it will not examine this issue further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.